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October 30, 1950

Statement of Justice Jesse W. Carter of the Supreme Court of California Relative to His Refusal to Sign the So-Called State Loyalty Oath.

I refuse to take the so-called state loyalty oath for the following reasons:

- (1) The Constitution of California (Article XX, §3) prescribes the oath which a Justice of the Supreme Court is required to take and declares that ". . . no other oath, declaration, or test, shall be required as a qualification for any office or public trust." I have taken that oath many times.

Since a Justice of the Supreme Court is not required to take the so-called loyalty oath, I would be disqualified in any litigation involving said oath, if I should take it. I am not disposed to so disqualify myself in such litigation.

The so-called loyalty oath is ineffective as a test of loyalty. Even its most ardent proponents say that it will be taken by those who are disloyal, and I believe this to be true. If it is true, then what will the oath accomplish? Absolutely nothing.

In my opinion, a much more effective loyalty test would be a declaration under oath that declarant had never interfered with anyone in the exercise of his constitutional rights, particularly those rights which totalitarian governments deny their subjects, such as freedom of religion, speech, assembly, privacy, etc., or discriminated against anyone on account of his race, color or creed, and that declarant had aided and will continue to aid the government in its war effort by not hoarding or violating rationing laws, rules or regulations, or in failing to report correctly, or pay, all taxes due the government, except in the following particulars:

Insert particulars

In which declarant has so failed

thus making himself guilty of perjury if he failed to state any item or particular in which he had not lived up to constitutional mandates, or failed to support the government in its war effort. I wonder how many of the zealous advocates of the loyalty oath would take such an oath.

I have been a public official of this state for over 30 years, and I resent having my loyalty questioned by now being asked to take a loyalty oath. If what I have done and said, both as a public official and as a private citizen does not establish my loyalty to the Government of the United States and this state, no amount of swearing will do so.

The oath which I took in 1913 when I became a member of the Bar of this state, - the oath which I took when I became District Attorney of Shasta County in 1919 and again in 1923, - the oath which I took when I became a member of the Board of Governors of the State Bar of California in 1927 and again in 1928, 1929 and 1931, - the oath which I took when I became City Attorney of the city of Mount Shasta in 1927, - the oath which I took when I became City Attorney of the city of Redding in 1937, - the oath which I took when I became State Senator from the 5th Senatorial District of this state in 1939, - and the oath which I took when I became Associate Justice of the Supreme Court of California in 1939, and again in 1941, and again in 1949, all contained a solemn vow that I would support the Constitution of the United States and the Constitution of the State of California. If I have lived up to any one

of those oaths, I am a loyal american citizen. If I have not lived up to those oaths, no amount of swearing now, and no loyalty oath, however artfully worded, will make me loyal.

- (6) In my opinion, the so-called loyalty oath is a reflection on the intelligence of the people of this state. Anyone who thinks that taking such an oath is a test of loyalty is, to say the least, naive. The federal government adopted a similar loyalty oath 12 years ago and repealed it in 1949 because it was found to be wholly ineffective. No doubt all of the so-called communists whom Senator Joseph McCarthy failed to find in the State Department took this oath. I have no objection to loyalty tests, but such tests should be based upon an investigation of what the person involved has done and said. Such investigation should be made by an agency equipped for such work and not by the Legislature or other public body motivated by political considerations. The federal government has such an agency - the F.B.I. If the Legislature would follow its traditional business of legislation and leave loyalty investigations to agencies equipped for such work, both the legislators and the people they represent would be better off. The hullabaloo

and hysteria over so-called loyalty oaths has made
California the laughing stock of the nation.

"Oh, wad some power the giftie gie us,
To see ourselves as others see us!
It wad frae monie a blunder free us,
And foolish notion."

(Burns)